



## INTERIOR BOARD OF INDIAN APPEALS

New Mexico Highway and Transportation Department  
v. Albuquerque Area Director, Bureau of Indian Affairs

17 IBIA 136 (06/14/1989)

Related Board cases:

18 IBIA 165

Reconsideration denied, 18 IBIA 232



## United States Department of the Interior

OFFICE OF HEARINGS AND APPEALS  
INTERIOR BOARD OF INDIAN APPEALS  
4015 WILSON BOULEVARD  
ARLINGTON, VA 22203

NEW MEXICO STATE HIGHWAY AND  
TRANSPORTATION DEPARTMENT,  
Appellant

v.

ALBUQUERQUE AREA DIRECTOR,  
BUREAU OF INDIAN AFFAIRS,  
Appellee

: Order Dismissing Appeal  
:  
:  
:  
: Docket No. IBIA 89-43-A  
:  
:  
:  
: June 14, 1989

On April 10, 1989, the Board of Indian Appeals (Board) received a copy of an April 6, 1989, letter from the Albuquerque Area Director, Bureau of Indian Affairs (BIA; appellee), to the New Mexico State Highway and Transportation Department (appellant). The letter indicated that appellant was apparently seeking review of a February 3, 1989, letter issued by appellee concerning the width of the right-of-way for the Tramway Road, New Mexico 556, across the Sandia Indian Reservation. Appellee's April 6, 1989, letter indicated that he did not believe his February 3, 1989, letter had contained a decision on the right-of-way issue, but instead had merely provided appellant with a statement of appeal procedures.

The Board originally believed that this matter should not be treated as an appeal, but, because of possible confusion engendered by the publication of new regulations governing appeals within BIA and to the Board, 1/ determined to treat it as an appeal in order to ensure that the matter would receive proper consideration.

On May 15, 1989, the Board received a letter from Hugh W. Parry, Esq., counsel for appellant, stating that, in response to appellee's April 6, 1989, letter, an additional notice of appeal had been filed with the Superintendent. Accordingly, by order dated May 15, 1989, the Board requested the appellant to show cause why the appeal should not be dismissed so that a decision could be rendered by BIA.

Appellant's response to the order to show cause was received on June 9, 1989. Appellant states that it has no objection to the dismissal of this appeal. Appellant requests, however, that the Board designate whether the Superintendent or appellee should hear the matter.

---

1/ See 54 FR 6478 and 6483 (Feb. 10, 1989).

The Board does not have jurisdiction over BIA officials such that it can designate appropriate deciding officials. In addition, such a statement in the present case would require a Board determination of whether the Superintendent had issued a decision and, if so, what the date of that decision was, when the time period for filing an appeal began to run, and whether appellant had filed a timely notice of appeal from the Superintendent's decision. All of these issues are properly considered initially by BIA.

Therefore, pursuant to the authority delegated to the Board of Indian Appeals by the Secretary of the Interior, 43 CFR 4.1, this appeal from the Albuquerque Area Director's letter of June 6, 1989 is dismissed without prejudice.

\_\_\_\_\_  
//original signed  
Kathryn A. Lynn  
Chief Administrative Judge

\_\_\_\_\_  
//original signed  
Anita Vogt  
Administrative Judge